

HOUSE BILL REPORT

ESHB 1109

As Passed House:
February 25, 2021

Title: An act relating to supporting victims of sexual assault.

Brief Description: Concerning victims of sexual assault.

Sponsors: House Committee on Public Safety (originally sponsored by Representatives Orwall, Mosbrucker, Simmons, Goodman, Leavitt, Valdez, Kloba, Graham, Morgan, Caldier, Rule and Macri).

Brief History:

Committee Activity:

Public Safety: 1/21/21, 1/28/21 [DPS].

Floor Activity:

Passed House: 2/25/21, 98-0.

Brief Summary of Engrossed Substitute Bill

- Requires the Washington Association of Sheriffs and Police Chiefs to collect and report information on the investigation status of cases tied to previously unsubmitted sexual assault kits collected prior to July 24, 2015.
- Requires the Criminal Justice Training Commission to conduct an annual case review program to review sexual assault investigations and prosecutions for the purposes of improving training and case outcomes.
- Expands the statutory rights for sexual assault survivors.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Goodman, Chair; Johnson, J., Vice Chair;

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Mosbrucker, Ranking Minority Member; Klippert, Assistant Ranking Minority Member; Davis, Graham, Griffey, Hackney, Lovick, Orwall, Ramos, Simmons and Young.

Staff: Kelly Leonard (786-7147).

Background:

Sexual Assault Kits. After a person has been the victim of a sexual assault, the person may undergo a forensic examination for the purpose of collecting evidence left behind during the assault. The doctor or nurse conducting the examination preserves the evidence using a sexual assault kit (SAK), also commonly referred to as a rape kit. In some cases, forensic analysis conducted on the contents of a SAK can yield a DNA (deoxyribonucleic acid) profile of a potential suspect. The profile is uploaded into the Combined DNA Indexing System (CODIS) where it might match profiles collected from other investigations or from arrested or convicted persons. A match, or "CODIS hit," functions as an investigative lead for the investigation of the sexual assault.

In 2015 the state established mandatory testing requirements for SAKs. A law enforcement agency is required to submit a SAK to the Washington State Patrol (WSP) Crime Laboratory for testing within 30 days of receiving it, with some exceptions. The requirement to test SAKs is prospective as of July 24, 2015, meaning it did not apply to previously unsubmitted SAKs. In 2019 the state required all law enforcement agencies to submit all SAKs collected prior to July 24, 2015, for testing at the WSP Crime Laboratory no later than October 1, 2019, with some exceptions. The WSP Crime Laboratory must facilitate the forensic analysis of these SAKs by December 1, 2021.

In October 2017 the Office of the Attorney General (AGO) received a federal grant to establish the Washington Sexual Assault Kit Initiative to address the accumulation of unsubmitted SAKs in the possession of local law enforcement agencies and hospitals.

Law Enforcement Training and Case Review Program Proposal. The Criminal Justice Training Commission (CJTC) provides basic law enforcement training for new recruits prior to certification as well as advanced training and educational programming for certified law enforcement officers. As of 2018, the CJTC must provide ongoing, specialized, intensive, and integrative training for persons responsible for investigating sexual assault cases involving adult victims. The training must be based on a victim-centered, trauma-informed approach to responding to sexual assault. Officers assigned to regularly investigate sexual assault involving adult victims must complete the training within one year of being assigned or by July 1, 2020, whichever is later.

In 2020 the state required and provided funding for the CJTC to develop a proposal for a case review program. The CJTC was required to research, design, and develop case review strategies designed to optimize outcomes in sexual assault investigations through improved training and investigatory practices.

Rights of Sexual Assault Survivors. The Washington Constitution grants crime victims basic and fundamental rights, and additional rights are enumerated in statute. There are also statutory rights specifically afforded to sexual assault survivors. In addition to all other rights provided in law, a sexual assault survivor has the right to:

- receive a medical forensic examination at no cost;
- consult with a sexual assault survivor's advocate during any medical evidentiary examination and during any interview by law enforcement officers, prosecuting attorneys, or defense attorneys, unless an advocate cannot be summoned in a timely manner, and regardless of whether a survivor has waived the right in a previous examination or interview;
- be informed, upon the request of the survivor, of when the forensic analysis of his or her SAK and other related physical evidence will be or was completed, the results of the forensic analysis, and whether the analysis yielded a DNA profile and match, provided that such disclosure is made at an appropriate time so as to not impede or compromise an ongoing investigation;
- receive notice prior to the destruction or disposal of his or her SAK;
- receive a copy of the police report related to the investigation without charge; and
- review his or her statement before law enforcement refers a case to the prosecuting attorney.

If a sexual assault survivor is denied a right, he or she may seek a court order directing compliance by the relevant party. Compliance with the right is the sole remedy available to the survivor.

Summary of Engrossed Substitute Bill:

Sexual Assault Kits. Subject to state funding, the Washington Association of Sheriffs and Police Chiefs (WASPC), in consultation with the AGO, must collect information on the investigational status of any sexual assault case with a previously unsubmitted SAK (collected prior to July 24, 2015), and must submit semiannual reports to the Legislature and the Governor. If forensic analysis of a previously unsubmitted SAK has resulted in a CODIS hit, the AGO may also request information on the case status of any related investigation or prosecution directly from the applicable law enforcement agency or prosecuting attorney. The applicable law enforcement agency or prosecuting attorney must provide the requested information.

Case Review Program. The case review program proposal is modified to be an annual, ongoing program conducted by the CJTC. The program must review case files from law enforcement agencies and prosecuting attorneys selected by the CJTC in order to identify changes to training and investigatory practices necessary to optimize outcomes in sexual assault investigations and prosecutions involving adult victims. In addition to current requirements, the program must include an analysis of the impact that race and ethnicity have on sexual assault case outcomes.

Requirements are established for access to case files. The case review program may review and access files, including all reports and recordings, pertaining to closed cases involving allegations of adult sexual assault only. Any law enforcement agency or prosecuting attorney selected for the program must make requested case files and other documents available to the CJTC, provided that the cases are not linked to ongoing, open investigations and that redactions may be made where appropriate and necessary. Agencies and prosecuting attorneys must include available information on the race and ethnicity of all sexual assault victims in the relevant case files.

If a law enforcement agency has not participated in the CJTC's specialized training for conducting sexual assault investigations, the CJTC may prioritize the agency for selection to participate in the case review program.

Rights of Sexual Assault Survivors. The statutory rights of sexual assault survivors are expanded.

The right to consult with a sexual assault survivor's advocate is modified to provide that it applies throughout the investigatory process and prosecution of the case. However, the survivor's right to consult with an advocate while providing testimony in a criminal trial is fulfilled by having the advocate present in the court room. The exception for the inability to summon an advocate is removed. Medical facilities, law enforcement officers, prosecuting attorneys, defense attorneys, courts and other applicable criminal justice agencies, including correctional facilities, are responsible for providing advocates access to facilities where necessary to fulfill the requirements associated with a survivor's right to consult with an advocate.

The following rights are added:

- the right to receive written notice of benefits under the Crime Victim Compensation Program;
- the right to receive a referral to an accredited community sexual assault program or, in the case of a survivor who is a minor, to receive a connection to services in accordance with the county child sexual abuse investigation protocol, which may include a referral to a children's advocacy center, when presenting at a medical facility for medical treatment relating to the assault and also when reporting the assault to a law enforcement officer;
- the right to receive timely notifications as to the status of the investigation and any related prosecution of the survivor's case;
- the right to be informed as to the expected and appropriate time frames for receiving responses to the survivor's inquiries regarding the status of the investigation and any related prosecution of the survivor's case; and further, receive responses to the survivor's inquiries in a manner consistent with those time frames;
- the right to access interpreter services where necessary to facilitate communication throughout the investigatory process and prosecution of the survivor's case; and

- where the sexual assault survivor is a minor, the right to have the prosecutor consider and discuss the survivor's requests for remote video testimony, and the right to have the court consider requests from the prosecutor for safeguarding the survivor's feelings of security and safety in the courtroom.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill comes from the work of the Sexual Assault Forensic Examination Best Practices Task Force (Task Force) and the King County Sexual Assault Resource Center, in consultation with survivors of sexual violence. By putting survivors at the center of the state's response to sexual assault, the state can move towards remedying the gaps in the current system and improving outcomes for survivors. Survivors have done an extraordinary job of speaking up and demanding change, and now it is time for the state to speak up on their behalf and afford them with needed protections.

The Task Force previously evaluated how to go about issuing a public apology to sexual survivors on behalf of the state. Sadly, it is not the time yet. The state needs to show that it has taken more meaningful steps to address systemic problems before an apology could be meaningful. This bill is part of this process.

The state has made considerable investments to test the backlog of old SAKs. As a result, there have been over 600 CODIS hits, with over 120 cases linking to other cases. The bill requires status updates on the investigations tied to those cases. The state needs to assess the impact of this work going forward, and statewide reporting will allow for this. The state should be making this data available to the public.

The bill also expands the case review program, which will help agencies identify areas for improvement and deploy best practices in the field. The case review program evaluates the effectiveness of training and also helps experts understand survivor attrition. This program was piloted in Whatcom County last year and was very successful.

The expansion of survivor's rights, as provided under the bill, is critical to reducing survivor attrition in the criminal justice system. In particular, the establishment of a clear right for a survivor to receive a referral to a community sexual assault program will help facilitate connections to services. When survivors use community sexual assault program services, they are more likely to participate in the criminal justice process, and they have more support in recovering from the assault. This referral process is needed in order to encourage

law enforcement officers and survivors' advocates to work as a team.

Language around the referral process should be clarified to address the role of children's advocacy centers.

(Opposed) There are serious issues with the reporting requirements for cold cases. The AGO is not the appropriate entity to be assigned the responsibility of collecting and reporting case status updates. Further, the state needs to provide more support to law enforcement agencies for investigating cold cases. The state allocated some funding last year, but coincidentally law enforcement agencies are currently facing significant demands and stressors due to the pandemic and other issues, making it difficult to move forward.

The survivor's rights provisions should be modified, especially with respect to notices and communications from law enforcement agencies. These should be affirmative rights that apply only upon the request of the survivor.

(Other) The bill needs some clarification to address the role of hospitals in implementing the survivor's rights provisions, particularly in the context of written notices on Crime Victims Compensation Program benefits. The bill could be amended to require the notice to be developed by the Office of Crime Victims Advocacy.

Persons Testifying: (In support) Representative Orwall, prime sponsor; Representative Mosbrucker; Antoinette Bonsignore, Criminal Justice Training Commission; Leah Griffin and Riddhi Mukhopadhyay, Sexual Assault Forensic Examination Working Group, Sexual Violence Law Center; Stephanie Wahlgren, Washington State Nurses Association; Sophia Arnold, Youth Against Sexual Violence; Heaven Strothers-Randall; Hanna Nichols, Rebuilding Hope!; Laurie Schacht, YWCA Clark County; Sarah Ciambrone, Sex Trafficking and Exploitation Program and Rebuilding Hope!; Katharine Hemann, Office of the Attorney General; and Paula Reed, Children's Advocacy Centers of Washington.

(Opposed) James McMahan, Washington Association of Sheriffs & Police Chiefs.

(Other) Alicia Eyler, Washington State Hospital Association.

Persons Signed In To Testify But Not Testifying: None.